

S.N. 09/924,926

REMARKS

Claims 1-23 are pending.

Claims 1-23 are rejected.

In the Office Action dated February 4, 2005, independent claims 1, 13 and 23 are rejected under 35 USC §102(b) as being anticipated by Mathias U.S. Patent No. 6,480,627; and claims 2-3, 6-12, 14-15 and 18-22 are rejected under 35 USC §103 as being unpatentable over Mathias in view of others. Further, claims 1-23 are rejected under 35 USC §112, first paragraph, as based on a single means, and the specification is objected to. Examiner Ferris is thanked for taking the time to discuss and clarify these rejections and objections with applicant's attorney Hugh Gortler.¹

The '112 rejection and the objections to the specification have been rendered moot by the amendments above. Independent claims 1, 13 and 23 have been amended to recite that specific colors of randomly selected pixels are tested to reduce the probability of at least one of a false-positive outcome and a false-negative outcome. The Abstract and the Summary have also been amended to recite this language.

Paragraph 21 of the specification has been amended to add the U.S. serial number for the patent application that was incorporated by reference. This amendment is believed to address paragraph 3 of the office action.

Claims 4-5 have been amended to depend from claim 1 instead of claim 3. Claims 16-17 have been amended to depend from claim 13 instead of claim 15.

¹ During a teleconference on April 21, 2005.

S.N. 09/924,926

The '102 rejections and '103 rejections are respectfully traversed. Mathis et al. do not teach or suggest a method of identifying a predominant color. They simply state that predominant color of a partition can be used (as one of several inputs) to classify an image (col. 4, lines 12-15).

The office action cites a passage at col. 2, lines 5-16. However, that passage simply states that rules can be used to identify patterns (pattern recognition).

The office cites a passage at col. 6, lines 55-63. However, that passage only discusses the use of an evolutionary algorithm for pattern matching.

The office action cites a passage at col. 6, lines 37-41. However, the relevance of offspring production to color identification is not clear.

These passages do not describe how to determine a predominant color. Nowhere else do Mathias et al. describe how to determine a predominant color in a digital image.

Mathias et al. is not even analogous art. MPEP 2141 states "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." The applicant's endeavor is identifying a predominant color in a digital image, whereas Mathias et al.'s endeavor is classifying images based on characteristic patterns (col. 2, lines 5-6 and col. 3, lines 23-25). Mathias et al are concerned with the algorithm used for recognizing patterns. The predominant color is simply an input to the algorithm.

S.N. 09/924,926

Because Mathias et al. do not teach or suggest predominant color identification that includes applying a detection rule to randomly-selected pixels in a digital image, claims 1-23 should be allowed over Mathias and the others.

The office action characterizes claims 6-10 and 18-22 as merely creating a color list. This characterization is incorrect. These claims recite a set of steps that minimize the number of pixels that are tested. The documents made of record do not teach or suggest such creation of a color list. For this additional reason, claims 6-10 and 18-22 should be allowed over the documents made of record.

The application is believed to be in condition for allowance. The examiner is encouraged to contact the undersigned to resolve any issues that might remain.